

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY)	
AVERAGE WHOLESALE PRICE)	MDL No. 1456
LITIGATION)	
_____)	CIVIL ACTION: 01-CV-12257-PBS
THIS DOCUMENT RELATES TO:)	
)	
ASTRAZENECA AND BRISTOL-MYERS)	
SQUIBB CO. CLASS 2/3 TRIAL)	
_____)	

[PROPOSED]
CONSOLIDATED ORDER RE: MOTION FOR NATIONWIDE CLASS
CERTIFICATION RELATING TO ASTRAZENECA AND THE BMS GROUP

November __, 2008

Saris, U.S.D.J.

Pursuant to Fed. R. Civ. P. 23, plaintiffs have moved for an order certifying nationwide classes for claims against defendants AstraZeneca and BMS. After considering the submissions of the parties and the record in this case, including the Class 2 and 3 trial under Massachusetts General Laws Chapter 93A, and after hearing on March 18, 2008, I order that plaintiffs' motion for nationwide class certification is **ALLOWED IN PART AND DENIED IN PART**. The Court relies on the reasons stated in *In re Pharm. Indus. Average Wholesale Price Litig.*, 252 F.R.D. 83 (D. Mass. 2008). The classes are certified as follows:

I. CLASSES AND SUBCLASSES CERTIFIED

The Court certifies the following Classes:

A. **Class 2: Third-Party Payor Medigap Supplemental Insurance Class.**

1. Class Definition:

All Third-Party Payors who made reimbursements for drugs based on AWP for a Medicare Part B covered Subject Drug that was manufactured by AstraZeneca (AstraZeneca PLC, Zeneca, Inc., AstraZeneca Pharmaceuticals L.P., and AstraZeneca U.S.) or the BMS Group (Bristol-Myers Squibb Co., Oncology Therapeutics Network Corp., and Apothecan, Inc.).

2. This class is subdivided into two subclasses corresponding to each defendant group.

3. The Court certifies the following plaintiffs as representatives of these Subclasses pursuant to Fed. R. Civ. P. 23(b)(3): United Food and Commercial Workers Unions and Employees Midwest Health Benefits Fund and Sheet Metal Workers National Health Fund.

4. The unfair and deceptive trade practices acts of the following 24 jurisdictions shall apply to these Subclasses: (a) Ariz. Rev. Stat. § 44-1521, *et seq.*; (b) Ark. Code § 4-88-101, *et seq.*; (c) Cal. Bus. & Prof. Code §§ 17200, *et seq.*, 1770; (d) Colo. Rev. Stat. § 6-1-101, *et seq.*; (e) Conn. Gen. Stat. § 42-110a, *et seq.*; (f) 6 Del. Code § 2511, *et seq.*; (g) Fla. Stat. § 501.201, *et seq.*; (h) Idaho Code § 48-601, *et seq.*; (i) 815 ILCS § 505/1, *et seq.*; (j) Me. Rev. Stat. Ann. Tit. 5, § 205-A, *et seq.*; (k) Minn. Stat. § 325F.68, *et seq.*; (l) Neb. Rev. Stat. § 59-1601, *et seq.*; (m) Nev. Rev. Stat. § 598.0903, *et seq.*; (n) N.H. Rev. Stat. § 358-A:1, *et seq.*; (o) N.J. Stat. Ann. § 56:8-1, *et seq.*; (p) N.M. Stat. Ann. § 57-12-1, *et seq.*; (q) N.Y. Gen. Bus. Law § 349, *et seq.*; (r) N.C. Gen. Stat. § 75-1.1, *et seq.*; (s) N.D. Cent. Code § 51-15-01, *et seq.*; (t) S.D. Code Laws § 37-24-1, *et seq.*; (u) Tex. Bus. & Com. Code § 17.41, *et seq.* (but only to

the extent the TPP has assets less than \$25 million); (v) Vt. Stat. Ann. tit. 9, § 2451, *et seq.*; (w) Wash. Rev. Code § 19.86.010, *et seq.*; and (x) Wyo. Stat. § 40-12-101, *et seq.* Plaintiffs allege that they have complied with the notice provisions of all consumer protection acts requiring such notice.

5. This class is certified pursuant to Fed. R. Civ. P. 23(b)(3).

B. Class 3: Consumer and Third-Party Payor Class for Medicare Part B Drugs Outside of the Medicare Context.

1. Class Definition:

All natural persons who made, or who incurred an obligation enforceable at the time of judgment to make, a payment for a physician-administered Subject Drug that was manufactured by AstraZeneca (AstraZeneca PLC, Zeneca, Inc., AstraZeneca Pharmaceuticals L.P., and AstraZeneca U.S.) or the BMS Group (Bristol-Myers Squibb Co., Oncology Therapeutics Network Corp., and Apothecon, Inc.); and all Third-Party Payors who made reimbursements based on contracts expressly using AWP as a pricing standard for a physician-administered Subject Drug that was manufactured by AstraZeneca or the BMS Group. Included within this Class are natural persons who paid coinsurance (i.e., co-payments proportional to the reimbursed amount) for a Subject Drug, where such coinsurance was based upon use of AWP as a pricing standard. Excluded from this Class are any payments or reimbursements for generic drugs that are based on MAC and not AWP.

2. This class is subdivided into two subclasses corresponding to each defendant group.

3. The Court certifies the following plaintiffs as representatives of these Subclasses pursuant to Fed. R. Civ. P. 23(b)(3): United Food and Commercial Workers Unions and Employees Midwest Health Benefits Fund, Pirelli Armstrong Tire Corporation Retiree Medical Benefits Trust (“PMBT”) (for BMS Only), Board of Trustees of Carpenters and Millwrights of Houston and Vicinity Welfare Trust Fund (“CMHV”), Teamsters Health & Welfare Fund of Philadelphia and Vicinity (“THWF”), Cheryl Barreca (for BMS only), Anna Choice (for BMS

only), Joyce Dison (for BMS only), Donna Kendall (for BMS only), Sandra Leef (for BMS only), Gerald Miller (for BMS only), Constance Nelson (for BMS only), Andrea Palenica (for BMS only), Scott Tell (for BMS only), Pauline Vernick (for BMS only), and Mardolyn Vescovi (for BMS only).

4. The unfair and deceptive trade practices acts of the following 19 jurisdictions shall apply to these Subclasses: (a) Ark. Code § 4-88-101, *et seq.*; (b) Colo. Rev. Stat. § 6-1-101, *et seq.*; (c) Conn. Gen. Stat. § 42-110a, *et seq.*; (d) 6 Del. Code § 2511, *et seq.*; (e) Fla. Stat. § 501.201, *et seq.*; (f) Idaho Code § 48-601, *et seq.*; (g) 815 ILCS § 505/1, *et seq.*; (h) Me. Rev. Stat. Ann. Tit. 5, § 205-A, *et seq.*; (i) Minn. Stat. § 325F.68, *et seq.*; (j) Neb. Rev. Stat. § 59-1601, *et seq.*; (k) Nev. Rev. Stat. § 598.0903, *et seq.*; (l) N.H. Rev. Stat. § 358-A:1, *et seq.*; (m) N.J. Stat. Ann. § 56:8-1, *et seq.*; (n) N.M. Stat. Ann. § 57-12-1, *et seq.*; (o) N.Y. Gen. Bus. Law § 349, *et seq.*; (p) N.D. Cent. Code § 51-15-01, *et seq.*; (q) Tex. Bus. & Com. Code § 17.41, *et seq.* (but only to the extent the TPP has assets less than \$25 million); (r) Vt. Stat. Ann. tit. 9, § 2451, *et seq.*; and (s) Wash. Rev. Code § 19.86.010, *et seq.* Plaintiffs allege that they have complied with the notice provisions of all consumer protection acts requiring such notice.

5. In addition, a consumer subclass is certified under the foregoing unfair and deceptive trade practices acts and the following eight additional unfair and deceptive trade practices acts, which do not afford a legal remedy to commercial entities like TPPs: (a) D.C. Code § 28-3901, *et seq.*; (b) Haw. Rev. Stat. § 480-1, *et seq.*; (c) Kan. Stat. § 50-623, *et seq.*; (d) Mich. Stat. § 445.901, *et seq.*; (e) Mo. Rev. Stat. § 407.010, *et seq.*; (f) Okla. Stat. tit. 15 § 751, *et seq.*; (g) R.I. Gen. Laws. § 6-13.1-1, *et seq.*; and (h) W. Va. Code § 46A-6-101, *et seq.*

6. This class is certified pursuant to Fed. R. Civ. P. 23(b)(3).

II. MISCELLANEOUS

1. The Class Period ends on December 8, 2003. The start date varies with the statute of limitations in each state. However, no start date will be earlier than 1992 when the Medicare regulations first reimbursed based on AWP.

2. Excluded from these Classes are: the defendants herein; any subsidiaries or affiliates of defendants; the officers and directors of defendants during the Class Period; members of the defendants' immediate families; any person, firm, trust, corporation, officer, director or any individual or entity in which any defendant has a controlling interest or which is related to, or affiliated with, any defendant; the legal representatives, agents, affiliates, heirs, successors-in-interest or assigns of any such excluded parties and governmental entities.

3. Pursuant to Fed. R. Civ. P. 23(g), the Court appoints the following firms as Co-Lead Counsel: Hagens Berman Sobol Shapiro LLP; Spector Roseman Kodroff & Willis, P.C.; Hoffman & Edelson; and Wexler Wallace LLP. The Court finds that Co-Lead Counsel are adequate and the counsel best able to represent the interests of the Classes.

4. The Court retains the discretion under Rule 23 to modify this Order.

5. The Court declines to certify issues for an interlocutory appeal pursuant to 28 U.S.C. § 1292(b) or to recommend appeal pursuant to Fed. R. Civ. P. 23(f).

PATTI B. SARIS
United States District Judge

TABLE OF SUBJECT DRUGS

ASTRAZENECA

<u>NDC</u>	<u>Description</u>
00310096036	Zoladex 3.6mg 1x1EA Depot
003100961 30	Zoladex 10.8mg 1x1EA Depot
00310095130	Zoladex 10.8mg 1x1 EA Depot
00310095036	Zoladex 3.6mg 1x1EA Depot

BMS GROUP

<u>NDC</u>	<u>Description</u>
00015301026	BLENOXANE INJ 15 UNIT VHA
00015301020	BLENOXANE INJ 15 UNIT VL
00015306326	BLENOXANE INJ 30 UNIT VHA
00015306301	BLENOXANE INJ 30 UNIT VL
00015053910	CYTOXAN 100MG LYOPH W/CYT
00015054812	CYTOXAN 1G 6X50ML VHA+
00015054810	CYTOXAN IGM LYOPH W/CYTOG
00015054610	CYTOXAN 200MG LYOPH W/CYT
00015054912	CYTOXAN 2G 6X100ML VHA+
00015054910	CYTOXAN 2GM LYOPH W/CYTOG
00015054710	CYTOXAN 500MG LYOPH W/CYT
00015050001	CYTOXAN FOR INJ 100 MG
00015050041	CYTOXAN INJ 100MG
00015050641	CYTOXAN INJ IX2GM VIAL
00015050241	CYTOXAN INJ 1X500MG VIAL
00015050141	CYTOXAN INJ 200MG
00015054712	CYTOXAN LYO 500MG VL VHA
00015054741	CYTOXAN LYOPH 500MG
00015053941	CYTOXAN LYOPHILIZED 100MG
00015054841	CYTOXAN LYOPHILIZED 1GM
00015054641	CYTOXAN LYOPHILIZED 200MG
00015054941	CYTOXAN LYOPHILIZED 2GM
00015050541	CYTOXAN PINJ 1X1G VIAL
00015050303	CYTOXAN TABLETS 50 MG
00015050302	CYTOXAN TABLETS 50MG
00015050401	CYTOXAN TABS 25MG
00015050301	CYTOXAN TABS 50MG
00015050348	CYTOXAN TABS 50MG
00015321429	PARAPLATIN 10X15ML VHA+
00015321529	PARAPLATIN 10X45ML VHA+
00015321329	PARAPLATIN 10X5ML VHA+

00015321410	PARAPLATIN 150MG LYOPH CY
00015321430	PARAPLATIN 1X150MG LYO VL
00015321530	PARAPLATIN 1X450MG LYO VL
00015321510	PARAPLATIN 450MG VL W/CYT
00015321330	PARAPLATIN 50MG LYOPHILIZ
00015321310	PARAPLATIN 50MG W/CYTO
00015335322	RUBEX 100 MG LYOPHILIZED
00015335324	RUBEX 100MG IMMUNEX LABEL
00015335124	RUBEX 10MG IMMUNEX LABEL
00015335122	RUBEX 10MG LYOPHILIZED
00015335224	RUBEX 50MG IMMUNEX LABEL
00015335222	RUBEX 50MG LYOPHILIZED
00015347630	TAXOL 100MG INJ MULTIDOSE
00015347627	TAXOL 100MG SEM-SYN VIAL
00015347620	TAXOL 100MG/16.7ML VHA+ L
00015347911	TAXOL 300MG/50ML VIAL
00015345620	TAXOL 30MG CONC FOR INJ
00015347530	TAXOL 30MG INJ MULTIDOSE
00015347527	TAXOL 30MG SEM-SYN VIAL
00015347520	TAXOL 30MG/5ML VHA+ LABEL
00015309510	VEPESID 100MG VIAL W/CYTO
00015309530	VEPESID 100MG VL W/O CYTO
00015306224	VEPESID 1G 50ML VIAL VHA+
00015306220	VEPESID 1GM/50ML
00015306120	VEPESID 500MG
00015306124	VEPESID 500MG 25ML VL VHA
00015309145	VEPESID 50MG CAPSULES
00015309520	VEPESID INJ 100MG/5ML
00015308420	VEPESID INJ 150MG/7.5ML

CERTIFICATE OF SERVICE

I hereby certify that I, Steve W. Berman, an attorney, caused a true and correct copy of the foregoing **[PROPOSED] CONSOLIDATED ORDER RE: MOTION FOR NATIONWIDE CLASS CERTIFICATION RELATING TO ASTRAZENECA AND THE BMS GROUP** to be delivered to all counsel of record by electronic service pursuant to Paragraph 11 of the Case Management Order No. 2, by sending on November 20, 2008, a copy to LexisNexis File and Serve for Posting and notification to all parties

By /s/ Steve W. Berman
Steve W. Berman
HAGENS BERMAN SOBOL SHAPIRO LLP
1301 Fifth Avenue, Suite 2900
Seattle, WA 98101
(206) 623-7292